



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Economic Development Division**

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	May 1, 2019
<b>SUBJECT/REPORT NO:</b>	Revised Ottawa Street Business Improvement Area (BIA) Appointment of the Board of Management for 2019 to 2023 (PED19054(a)) (Wards 3 and 4)
<b>WARD(S) AFFECTED:</b>	Wards 3 and 4
<b>PREPARED BY:</b>	Julia Davis (905) 546-2424 Ext. 2632
<b>SUBMITTED BY:</b>	Glen Norton Director, Economic Development Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the following individuals be appointed to the Ottawa Street Business Improvement Area (BIA) Board of Management for a four-year term (2019 to 2023):

- (i) Councillor Nrinder Nann, Ward 3 Councillor
- (ii) Councillor Sam Merulla, Ward 4 Councillor
- (iii) Melanie Anderson
- (iv) Sauro Bertolozzi
- (v) Michael Carruth
- (vi) Randy Gallant
- (vii) Eva Grad
- (viii) Mike Heddle
- (ix) Kerry James
- (x) Wendy Kemp
- (xi) Helena McKinney
- (xii) Mike Spadafora
- (xiii) Ariane Terveld

**EXECUTIVE SUMMARY**

Appointment of the above individuals to the 2019 to 2023 Business Improvement Area (BIA) Board of Management of the Ottawa Street BIA.

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

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At its Annual General Meeting (AGM) on Wednesday November 14, 2018, the membership of the Ottawa Street BIA elected the above individuals to serve on its Board of Management for a four-year term (2019 to 2023).

Following the AGM, five property owner/business members of the Ottawa Street BIA put forward a formal written challenge to the Board of Management which identified perceived inconsistencies with the election with respect to timelines for: AGM notification, improper process of allowing proxy voting, as well as, a statement that expressed concern that steps were not taken to ensure that the voting proceeded in an orderly fashion.

Once this formal challenge was received, the Ottawa Street BIA Board of Management had the responsibility to review the issues identified and provide an appropriate response to the written challenge. Boards of Management for the BIAs are responsible for the election process, which takes place every four years (aligned with the timing of the Municipal Elections) at the organization's AGM. Once the election is held by the members, the Board of Management is required to forward a list of the nominees elected to the City of Hamilton for consideration and appointment by City Council.

The Ottawa Street BIA Board of Management provided information to the City of Hamilton addressing the items outlined in the challenge. The BIA Board of Management indicated that various communications notifying the members of the AGM were sent out via email (the BIAs normal communication channel) three separate times:

- 35 days prior (October 10, 2018);
- 23 days prior (October 22, 2018); and,
- 14 days prior (October 31, 2018) to the scheduled meeting date of Wednesday November 14, 2018.

In addition to the email communication, the Ottawa Street BIA Board of Management advised that hand-written letters were also delivered to member businesses and properties within the BIA jurisdiction on Thursday September 27, 2018 (47 days prior) and Tuesday October 6, 2018 (40 days prior). *The Municipal Act, 2001*, Section 206, dictates that Board of Management shall give reasonable notice to membership of an election vote.

In response to the matter outlined regarding proxy voting, the Ottawa Street BIA Board of Management indicated that a written letter was provided to the BIA Secretary 12 days prior to the date of the AGM. Within the City of Hamilton BIA Procedure By-law No. 14-253, Article 13, Section 2, it is stated that any Member of a corporation may nominate, in writing by letter, delivered to the Secretary of the Board of Management at least 15 days before the set date for a vote, one individual to vote on its behalf. The City of Hamilton

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BIA Procedure By-law is included as Appendix “A” to Report PED19054(a) (Schedule C to the Business Improvement Area By-law No. 14-253). Given that this receipt of letter did not adhere to the outlined timeframe, the Ottawa Street BIA Board of Management, at an emergency meeting held on Friday December 21, 2018, voted to void the proxy vote, removing one vote from each of the 11 elected candidates. With this outcome, the Ottawa Street Board of Management has stated results of the election would not be altered.

Upon further direction from Council, Urban Renewal Staff conducted a meeting with the Ward 3 and Ward 4 Councillors along with the complainants on Friday March 22, 2019. At this meeting, the group discussed the concerns outlined in the election held on Wednesday November 14, 2018 and determined that recommendation for appointment would move forward as per staff Report PED19054(a). Urban Renewal Staff committed to working with members of the community, within the Ottawa Street BIA and across the city, to develop best practice governance and communication processes for all BIAs to proactively address and avoid similar issues and complaints in the future.

**Alternatives for Consideration – See Page 5**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: There are no financial implications.

Staffing: There are no staffing implications.

Legal: *The Municipal Act, 2001*, Section 204, Sub-section (3) dictates that City Council must appoint the Board of Management of the Business Improvement Areas.

**HISTORICAL BACKGROUND**

At its AGM on Wednesday November 14, 2018, the Ottawa Street BIA membership elected the above individuals to serve on its Board of Management for a four-year term (2019 to 2023).

Following the AGM, on December 3, 2018, three members of the Ottawa Street BIA voiced concern to City of Hamilton staff during an in-person meeting that there were perceived inconsistencies with the election process by the Ottawa Street Board of Management. On December 13, 2018 a formal written challenge to the election was submitted by five members to the Ottawa Street BIA Board of Management. The Urban Renewal Section staff were copied on this correspondence.

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Outlined in this written challenge were concerns regarding the timelines of notifications as outlined in Appendix “A” to Report PED19054(a) (Schedule C to the Business Improvement Area By-law No. 14-253). The five members who challenged the election results indicated in their correspondence that the notification of the meeting and the slate of candidates was received 22 days prior to the meeting date when 30 days is the outlined threshold. Additionally, in the challenge there were issues outlined that there may have been unsanctioned proxy voting that did not comply with the outlined process in the BIA Procedure By-law as well as a statement that steps were not taken to ensure that the voting proceeded in an orderly fashion.

Once this formal challenge was received, the Ottawa Street BIA Board of Management had the responsibility to review the comments and provide an appropriate response to the written challenge. Boards of Management for the BIAs are responsible for the election process which takes place every four years (aligned with the timing of the Municipal Elections) at the organization’s annual meeting of the membership. Once the election is held, the Board of Management is to forward a list of the nominees elected to the City of Hamilton for consideration and appointment by City Council.

In order to discuss and review the challenge received on December 13, 2018, the Ottawa Street Board of Management held an emergency meeting on Friday December 21, 2018 at which the concerns included within the written challenge were discussed. Following this meeting, a written update and minutes were provided to Urban Renewal Staff on Monday January 7, 2019.

At an in-person meeting with four representatives of the Ottawa Street BIA Board of Management on Monday January 14, 2019 additional documentation was requested by City of Hamilton staff with respect to the communications to the Ottawa Street BIA membership regarding the AGM. The Ottawa Street Board of Management provided information to the City of Hamilton on Monday January 21, 2019 which addressed the items outlined in the written challenge. The BIA Board of Management indicated that various communications notifying the members of the AGM were sent out via email (the BIAs normal communication channel), three separate times:

- 35 days prior (October 10, 2018);
- 23 days prior (October 22, 2018); and,
- 14 days prior (October 31, 2018) to the scheduled date of Wednesday November 14, 2018.

In addition to the email communication, the Ottawa Street BIA Board of Management advised that hand written letters were delivered to member businesses and properties within the BIA jurisdiction on Thursday September 27, 2018 and Tuesday October 6,

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2018. *The Municipal Act, 2001*, Section 206, dictates that Board of Management shall give reasonable notice to membership of an election vote.

In response to the matter outlined regarding proxy voting, the Ottawa Street BIA Board of Management indicated that a written letter was provided to the BIA Secretary 12 days prior to the date of the AGM. Within the City of Hamilton BIA Procedure By-law No. 14-253, Article 13, Section 2, it is stated that any Member of a corporation may nominate, in writing by letter, delivered to the Secretary of the Board of Management at least 15 days before the set date for a vote, one individual to vote on its behalf. The City of Hamilton BIA Procedure By-law is included as Appendix "A" to Report PED19054(a) (Schedule C to the Business Improvement Area By-law No. 14-253). Given that this receipt of letter did not adhere to the outlined timeframe, the Ottawa Street BIA Board of Management, at an emergency meeting held on Friday December 21, 2018, voted to void the proxy vote, removing one vote from each of the 11 elected candidates. With this outcome, the Ottawa Street Board of Management has stated results of the election would not be altered.

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## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

*The Municipal Act, 2001*, Section 204, Sub-section (3) dictates that City Council must appoints the Boards of Management to the BIAs.

## **RELEVANT CONSULTATION**

Through the consultation process, staff engaged with the following City of Hamilton Divisions, Boards and external organizations to assist with the development of the recommendations included within this Report:

- Councillor Nrinder Nann, Ward 3 and Councillor Sam Merulla, Ward 4;
- Ottawa Street Business Improvement Area Board of Management;
- Ottawa Street Business Improvement Area Members who submitted the written challenge to the election;
- Ontario Business Improvement Area Association; and,
- Corporate Services Department, Legal and Risk Management Services Division.

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## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The Board of Management of BIAs is entrusted, subject to limitations as the bylaws provide, with the administration of the organization known as the BIA. The election process of BIA Boards of Management is within the control and responsibility of the Board itself. The City of Hamilton is not specifically obliged to oversee the election process of BIAs, the ownership of this resides with each individual Board of Directors which is a corporation and a local board of the City of Hamilton.

The Ottawa Street BIA Board of Directors provided information to the City of Hamilton in response to the challenge addressing the issues as presented and have determined as a group that they will be moving forward with the slate as elected by the membership at their AGM on Wednesday November 14, 2018.

## **ALTERNATIVES FOR CONSIDERATION**

Should Council decide not to accept the recommendations as included within Report PED19054, then the Ottawa Street Board of Management slate as presented would not be appointed for the 2019 to 2023 term. Council would then move forward with directing the Ottawa Street BIA, under *The Municipal Act, 2001*, Section 204, Sub-section 9, that a meeting of the members of the improvement area be held to elect or select another candidate for the municipality's consideration.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement and Participation**

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

### **Economic Prosperity and Growth**

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix "A"–Schedule C to the Business Improvement Area By-law No. 14-253

JD:sd